

In the High Court of Judicature at Madras

Dated: 14/11/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No.1272 of 2002

Chennai Malar Viyabarigal Sangam
(Regd) rep. by its President
Badriyan Street, Chennai 600 001. .. Petitioner

-Vs-

1. The Corporation of Chennai rep.
by its Commissioner
Rippon Buildings, Chennai 600 003.

2. The Zonal Officer
Zonal No.II
Corporation of Chennai
47 Besin Bridge Road
Chennai 79.

3. Chennai Pushpa Vyabarigal and
Commission Agent Sangam (Regd.)
rep. by its President
L. Raju Chettiar
(R.3 was impleaded as per the
order dated 05.04.2002 made
in WPMP.No.7015 of 2002.) .. Respondents

For petitioner : Mr. R. Gandhi, Sr. Counsel
for Mr. R.G. Narendiran

For respondents: Mr. P.Sundaram for R.1 & 2
Mr. R. Ramanlal for R.3

:ORDER

By consent of all the parties, writ petition itself is taken
up for disposal.

2. Chennai Malar Viyabarigal Sangam, Badriyan Street, Chennai
- 1 through its President, challenges the proceedings of the Commissioner of
Corporation of Chennai - first respondent herein dated 18.01.2002, rejecting
their request to sell perishable items like fruits, flowers and vegetables at

Badrian Street, Chennai 1. The Sangam prayed for quashing of the said proceedings and for consequential order forbearing the respondents from in any manner interfering with the peaceful retail trading in flowers by the members of the petitioner Sangam in private properties and in particular at Badriyan Street, Chennai 1.

3. The case of the petitioner Sangam is briefly stated hereunder:

It is a registered Sangam under the provisions of Tamil Nadu Societies Registration Act and the members of the petitioner Sangam are retail traders in flowers. They were conducting retail trading in flowers in two private properties at No.7 and 55, Badriyan Street, Chennai 1. The owners of the said premises had permitted the members of the petitioner Sangam to conduct retail trade in flowers. They were issued notice as per the provisions of Tamil Nadu Specified Commodities Market Regulation of Location Act, 1996, since the whole sale trade in flowers is prohibited in George Town area and the Government has established a whole sale market at Koyambedu. It is also the claim of the respondents that the whole sale trade in flowers in G.T. area is in violation of the Act. The newly impleaded third respondent filed W.P.No.9633 of 1999 before this Court for direction to remove the shops put up by whole sale flower merchants in Badriyan Street. The petitioner Sangam impleaded themselves in the said writ petition. By order dated 01.10.2001, this Court dismissed the said writ petition. Aggrieved by the said order, the petitioner Sangam filed W.A.No.1990 of 2001. The Division Bench by order dated 04.10.2001, held that if a person is retailer, he can trade in George Town area. Ultimately, the Division Bench directed that notice should be issued to the petitioner Sangam and to conduct an enquiry after giving opportunity to the petitioner within a period of one month from the date of receipt of that order. Pursuant to the said order, the second respondent issued a notice on 08.11.2001, calling upon the members of the petitioner Sangam to appear for an enquiry. The notice was vague and did not specify the purpose of enquiry. However, on 08.11.2001, the members of the petitioner Sangam along with their counsel, appeared before the second respondent and mentioned that the purpose of enquiry has not been stipulated. The matter was adjourned to 16.11.2001. Thereafter, there was no hearing and the Office bearers of the petitioner Sangam could not contact the second respondent. Then, they received a notice on 24.12.2001, stating that the hearing was on 04.01.2002. On 05.01.2002, the petitioner Sangam submitted the list of members and they were informed that inspection would be conducted for verification of details. Therefore, the petitioner Sangam decided to submit their written reply after the inspection. However, the first respondent by proceedings dated 18.01.2002 in an arbitrary and unreasonable manner, directed the members of the petitioner Sangam to close down their business, failing which serious action will be taken. Hence, the present writ petition.

4. The Commissioner, Corporation of Chennai - first respondent herein has filed a counter affidavit disputing various averments made by the petitioner Sangam. It is stated that the members of the petitioner Sangam are doing whole sale business in flower vending at Badriyan Street. The Government in their G.O.Ms.523 Housing and Urban Development Department dated 17.12.1996, notified the Koyambedu Market Complex as the

whole sale market area. The C.M.D.A. also notified that the George Town area bounded on the North by Audiyappa Street, East by Broadway; South by NSC Bose Road and West by Godown Street, is banned for trading wholesale business in perishable items, including flowers. The said Badriyan Street falls within the G.T. area specified above. Therefore, the members of the petitioner Sangam cannot carry on whole sale business. As per the direction of the Division Bench of this Court in W.A.No.1990 of 2001, the members of the petitioner Sangam were issued notice for enquiry fixed on 08.11.2001. Their counsel Mr. Sivagnanam appeared before the Zonal Office II on 08.11.2001. Since the members of the petitioner Sangam or their counsel did not furnish any report and sought time to submit explanation on 16.11.2001 . Another opportunity was given to them by posting the enquiry on 04.01.2002. However, no explanation was tendered, but only a list was submitted before the Enquiry Officer. Based on the list furnished to the Zonal Office II, the Zonal Officer inspected the site and reported that the Chennai Chillarai Pushpa Vanigargal Sangam had furnished a list. It was also found on inspection that the traders are doing whole sale flower trade only at Badriyan Street, but not retail business. Therefore, the respondents had no other option, except to enforce Act 24 of 1996 and initiate action as contemplated under Section 379-A of MCMC Act. The members of the petitioner Sangam were given reasonable opportunity as per the order of this Court in Writ Appeal No.1990 of 2001 and it was the petitioner Sangam, which failed to furnish proper explanation or details.

5. In the light of the above pleadings, I have heard Mr. R. Gandhi, learned senior counsel for the petitioner Sangam, Mr. P. Sundaram, learned counsel for respondents 1 and 2 and Mr. Ramanlal for the third respondent.

6. Mr. R. Gandhi, learned senior counsel for the petitioner Sangam after pointing out the order passed by the Division Bench of this Court dated 4.10.2001 in W.A.No.1990 of 2001, would contend that the first respondent has committed an error in passing the impugned proceedings, rejecting their request. In other words, according to the learned senior counsel, the respondents 1 and 2 have not fully complied with the specific order of the Division Bench dated 04.10.2001.

7. On the other hand, the learned counsel appearing for respondents 1 to 3 would contend that in view of personal inspection and factual conclusion arrived at by the second respondent, the impugned order of the first respondent cannot be faulted with.

8. In the light of the submissions made, it is useful to refer the order of the Division Bench dated 04.10.2001 made in W.A.No.1990 of 2001. Petitioner herein is the appellant before the Division Bench. By notice dated 21.06.1999, the members of the appellant Sangam were directed to stop trading in flowers on the ground that they do trade as wholesaler and in order to remove the congestion, a wholesale market has been constructed at Koyambedu for whole sale trading in flower. In the notice it is also stated that the whole sale trading in flowers in G.T. area is prohibited. The following conclusion / directions of the Division Bench is relevant.

"If really some of the members of the appellant association are wholesalers in flowers trading, even the authority under the Madras City Municipal Corporation Act, 1919 cannot grant licence for the reason that they had to shift their business to Koyambedu where a provision is made for wholesalers in flower trading. On the other hand, if some of the members of the appellant association are retailers, then, such measures, as provided under the Act regarding the requirement of license can be enforced against the members of the appellant association, who are retail flower traders. In the circumstances, this Writ Appeal is disposed of with a direction that a notice be issued to the appellant association, which in turn, will inform all its members and submit a reply. After fixing a date for enquiry and after giving opportunity to such persons nominated by the appellant association of being heard, an order be passed by the respondents in accordance with observations made supra. The above exercise shall be made within a period of one month from the date of receipt of a copy of this Judgment. Till then, the action mentioned in the notice dated 21.6.99 issued by the Chennai Corporation, Division-2, shall not be enforced. ..."

9. It is the claim of the learned senior counsel for the petitioner that as per the Division Bench order, the respondents 1 and 2 have to issue notice to the members of the petitioner Sangam; after fixing the date for enquiry and after giving opportunity to such persons nominated by the petitioner Sangam of being heard, an order be passed by the respondents in accordance with the observations made supra. In other words, as per the said order, respondents 1 and 2 have to issue notice to the members of the petitioner Sangam, after conducting enquiry, afford personal hearing to the persons nominated by the Sangam. A perusal of the impugned proceedings of the first respondent and his counter affidavit does not show that an enquiry as contemplated by the Division Bench was conducted. In this regard, it is relevant to refer the case of Dr. M.N. Dasanna vs. State of Andhra Pradesh reported in 1973 (2) SCC 378, wherein their Lordships have explained the word "enquiry" in Section 8 of the Andhra Pradesh Civil Services (Disciplinary Proceedings) Act, 1960. In para 10 of the Judgment, their Lordships have held,

"10. The enquiry was stated to be cover the hearing of the case, i.e., recording evidence, admitting documents and generally completing the record upon which a finding would be based. It is only after all the material has been placed on the record by both the sides that the stage of reporting a finding would arise. ..."

10. In the case of Ranganathan, J. vs. The Govt., of Tamil Nadu reported in 1989 (1) L.W. 44, the learned single Judge of this Court (Swamikkannu, J.) while considering Section 9(5) of the Tamil Nadu Urban Land Ceiling and Regulation Act, 1978 has held,

"8. It is necessary that in the enquiry contemplated under Section 9(5) on the objection petition, there should be a reasonable opportunity given to the petitioner by giving notice to the petitioner regarding the date of hearing of the said objection petition as well as the fact that on the appointed date the representation made by the petitioner would be heard

personally. The expression, "opportunity of being heard" as occurring in S.9(5) of the Act, means and includes personal hearing. There need not be any question of the part of the objector asking for a personal hearing. A competent authority or the Government, as the case may be, which entertains a petition under S.9(5), should necessarily comply with this mandatory provision of giving notice of hearing and it is only after hearing the petitioner who raised the objections, an order could be passed."

11. No doubt, the learned counsel for the respondents would contend that as per the earlier decision of this Court in the case of General Merchant Association vs. Corporation of Chennai reported in 2000 (3) CTC 565, the petitioner Sangam is estopped from raising the very same objection. I am unable to appreciate the said contention because though respondents 1 and 2 herein were parties before the Division Bench in W.A.No.1990 of 2001 dated 04.10.2001, the said objection based on the earlier decision of this Court reported in 2000 (3) CTC 56 5 (cited supra) had not been raised. I have already referred to the direction of the Division Bench dated 04.10.2001 and the conditions to be fulfilled by respondents 1 and 2. Merely because the second respondent had inspected the business premises of the members of the petitioner Sangam and arrived a conclusion that they are doing whole sale business at Badriyan Street, as rightly argued by the learned senior counsel for the petitioner it cannot be construed that respondents 1 and 2 have fully complied with the specific order of the Division Bench dated 04.10.2001. As observed in the decision of the Supreme Court, in the light of the objection of the members of the petitioner Sangam, it is but proper for respondents, particularly first respondent to afford an opportunity, receive oral and documentary evidence if any and give a specific finding, namely, whether the members of the petitioner Sangam are doing retail or whole sale business in flowers at Badriyan Street. As observed earlier, the reading of the impugned proceedings does not show that respondents 1 and 2 have resorted to such recourse. In such a circumstance, in the light of the specific order of the Division Bench dated 04.10.2001, this Court has no other option, except to quash the impugned proceedings of the first respondent dated 18.01.2002 and the matter is remitted to the first respondent for passing fresh orders as directed in the Division Bench order dated 04.10.2001. Net result, the writ petition is allowed to this extent. No costs.

Index:Yes

Internet:Yes

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To

1. The Commissioner
Corporation of Chennai
Rippon Buildings, Chennai 600 003.

2. The Zonal Officer
Zonal No.II
Corporation of Chennai

47 Besin Bridge Road
Chennai 79.

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